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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,448	07/26/2001	Edward Covannon	82990F-P	7353

7590

02/26/2003

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EXAMINER

HOTALING, JOHN M

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s) MF	
	09/915,448		COVANNON ET AL.	
	Examiner		Art Unit	
	John M Hotaling II		3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) see attachment (1) which pertains to the recent statutory changes to 35 U.S.C. 102(e)

Claims 1-46 rejected under 35 U.S.C. 102(e) as being anticipated by Gershman et al US Patent 6,401,085. The rejection contained in the previous office action is maintained and incorporated herein.

Claims 1, 20, 37, and 42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Layson, Jr US Patent 6,014,080. The rejection contained in the previous office action is maintained and incorporated herein.

Response to Arguments

2. Applicant's arguments filed 12/9/02 have been fully considered but they are not persuasive.

With respect to the rejections under 35 U.S.C. 112, the examiner considers the amendments to the claims adequately overcome the previous rejections.

With respect to applicant's argument that Gersman not being interactive please see the following that was copied from the previous rejection where the personal profile and the user interactivity is outlined by the examiner. Columns 4 and 5 disclose that the system may be implemented on different platforms and operating systems. Column 15 discloses that a restriction criterion is settable by a user according to the user's preference. Column 33 discloses that a users request may be returned in the format of

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a URL. Column 41 along with figure 13 discloses the formation of personal profiles that contain a username, password, a unique identifier, profiles, and profile restrictions.

Column 48 discloses maintaining user profiles with a combination of user specified information and system learned and extrapolated data from the user information and activities. Column 48 also discloses that the system can attempt to determine by

observation and cues from the environment, where the users are or are likely to be

located. Column 60 discloses that the system can incorporate GPS, bio-sensors and environmental sensors into the device for a plurality of additional functions. All of the above results in a system that provides instructions in accordance with a user profile that provides instructions to the device for controlling the device.

Furthermore, a detailed reading of Gershman would result in an understanding of the object oriented programming (OOP) which is a process of developing computer software using objects, including steps of analyzing the problem, designing the system, and constructing the program. From column 6 one can see that with the concepts of composition-relationship, encapsulation, inheritance and polymorphism, an object can represent just about anything in the real world. In fact, our logical perception of the reality is the only limit on determining the kinds of things that can become objects in object-oriented software. Some typical categories are as follows:

Objects can represent physical objects, such as automobiles in a traffic-flow simulation, electrical components in a circuit-design program, countries in an economics model, or aircraft in an air-traffic-control system.

Objects can represent elements of the computer-user environment such as windows, menus or graphics objects.

An object can represent an inventory, such as a personnel file or a table of the latitudes and longitudes of cities.

An object can represent user-defined data types such as time, angles, and complex numbers, or points on the plane.

With this enormous capability of an object to represent just about any logically separable matters, OOP allows the software developer to design and implement a computer program that is a model of some aspects of reality, whether that reality is a physical entity, a process, a system, or a composition of matter. Since the object can represent anything, the software developer can create an object which can be used as a component in a larger software project in the future.

In response to applicant's argument on page 5 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the invention can be embodied as a toy with various input and output features) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument on page 6 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the illustrated embodiment is a toy programmed to provide a certain interactivity based on knowledge of certain environmental information) are not

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recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner notes the lack of arguments with respect to the rejection of Layson US Patent 6,014,080 which clearly anticipates claims 1, 20, 37, and 42 and interprets the lack of arguments as an admission that Layson clearly anticipates the above claims.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M Hotaling II whose telephone number is 703 305 0780. The examiner can normally be reached on Mon-Thurs 7:30-6.


John M Hotaling II
February 19, 2003

Recent Statutory Changes to 35 U.S.C. § 102(e)

On November 2, 2002, President Bush signed the 21st Century Department of Justice Appropriations Authorization Act (H.R. 2215) (Pub. L. 107-273, 116 Stat. 1758 (2002)), which further amended 35 U.S.C. § 102(e), as revised by the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501 (1999)). The revised provisions in 35 U.S.C. § 102(e) are completely retroactive and effective immediately for all applications being examined or patents being reexamined. Until all of the Office's automated systems are updated to reflect the revised statute, citation to the revised statute in Office actions is provided by this attachment. This attachment also substitutes for any citation of the text of 35 U.S.C. § 102(e), if made, in the attached Office action.

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102 in view of the AIPA and H.R. 2215 that forms the basis for the rejections under this section made in the attached Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

35 U.S.C. § 102(e), as revised by the AIPA and H.R. 2215, applies to all qualifying references, except when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. For such patents, the prior art date is determined under 35 U.S.C. § 102(e) as it existed prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102 prior to the amendment by the AIPA that forms the basis for the rejections under this section made in the attached Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

For more information on revised 35 U.S.C. § 102(e) visit the USPTO website at www.uspto.gov or call the Office of Patent Legal Administration at (703) 305-1622.